Loh Mui Fah v Dr Selvakumar Thirunavukarasu & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 23 NCVC-68–07 OF 2013
YEOH WEE SIAM J
13 JUNE 2014

Tort — Defamation — Libel — Allegation that article in newspaper published words defamatory and libelous of complainant — Claim for damages — Whether words complained of defamatory of complainant — Whether newspaper could succeed in their defence of qualified privilege

The plaintiff was a notable businessman in Malaysia and other parts of Asia while the first defendant was at the material time the Chief News Editor of the second defendant, a Malaysian daily newspaper ('*The Star*'). The third defendant was at the material time a journalist employed by the second defendant. He prepared and wrote a section of the news article ('the article') appearing in *The Star* entitled 'Judges must read submissions'. The plaintiff contended that in the article, the defendants published the words which were defamatory of the plaintiff. The plaintiff claimed that the words in the section of the article written by the third defendant, referred to the plaintiff and were a libellous publication, and were defamatory of him. In this claim, the plaintiff claimed for general damages, and aggravated and exemplary damages against the defendants for libel, and interest and costs. The issues are that arose for the court's determination were whether the words complained of in the section of the article were defamatory of the plaintiff; if the words were defamatory of the plaintiff, whether the defendants could succeed in their defence of qualified privilege; if the defendants failed in their defence, what would be the damages to be paid by the defendants to the plaintiff.

Held, allowing the claim against the second and third defendants and dismissing claim against first defendant:

(1) The words complained of refer to a 'two-minute clip released yesterday'. The video clip was the video recording ('the video recording') of the actual conversation between the plaintiff and one Khoo Chooi Thuan ('Khoo'). It was without a doubt that the plaintiff is 'Loh Mui Fan' in the video recording. The court is satisfied that the words complained of, read in the context of the article, and read together with the transcript of the video recording prove that the words complained of refer to the plaintiff, and not to any other person. In the statement of agreed facts, the second defendant admitted to publishing the article. Therefore, it was an

undisputed fact that the second defendant published the words complained of (see paras 23, 26–27).

(2) The literal and obvious interpretation of the words complained of, to an ordinary reader, was that they clearly implied that the plaintiff was seeking assistance, from the person whom he was in conversation with, to use that person's connections with certain judges to influence the outcome of the case that the plaintiff was involved in (see para 39).

(3) The defendant's offer to publish clarification was made almost two months after the original publication of the words complained of. The clarification was not a correction article as required by the plaintiff. Other than an expression of regret, there was no apology proffered by the defendants for publishing the defamatory words against the plaintiff. By leaving it open to the reader's interpretation of the words complained, the defendants in fact did not accept responsibility for the libellous publication against the plaintiff. Thus, the clarification was wholly inadequate in the circumstances (see para 60).

(4) In view of the inadequate and unacceptable clarification proposed by the defendants, and in the absence of an unconditional apology published in the second defendant's newspaper, the defendants were unable to avail themselves of the defence of qualified privilege provided in s 12(2) of the Defamation Act 1957. Even though it was very obvious to the third defendant on what was said in the video recording, it was a fact that the words complained of, read within its proper context of the article that was published, were erroneous in content, and were not a fair and accurate report of the press conference and the video recording presented during the press conference (see paras 61 & 70).

(5) The defendants have also failed in their reliance on the common law defence of qualified privilege. Comparing the defendants' report and publication of the words complained of with other media reports on the same press conference and video recording, the other media reports reported accurately the conversation that the plaintiff had with Khoo in the video recording. Therefore, the defendants' publication was clearly false and defamatory of the plaintiff. In such a situation, malice on the part of the defendants could be inferred, more so when other media could report it accurately, but the defendants did not do so. If there was no malice, the defendants would not have recklessly published the false report without verifying the truth from the plaintiff and by proper deciphering of the actual video recording (see paras 76–78).

[Bahasa Malaysia summary

Plaintif adalah seorang usahawan terkenal di Malaysia dan beberapa bahagian Asia sementara defendan pada masa material merupakan Ketua Pengarang berita defendan kedua, sebuah akhbar harian Malaysia ('*The Star*'). Defendan

ketiga pada masa material adalah seorang wartawan yang berkerja untuk defendan kedua. Dia telah menyediakan dan menulis satu bahagian artikel berita ('artikel tersebut') yang diterbitkan dalam *The Star* bertajuk 'Judges must read submission'. Plaintif menghujahkan bahawa dalam artikel tersebut, defendan-defendan telah menerbitkan perkataan-perkataan yang memfitnah plaintif. Plaintif mendakwa bahawa perkataan-perkataan dalam bahagian artikel yang ditulis oleh defendan kedua, merujuk kepada plaintif dan merupakan terbitan yang memfitnah dan memfitnah dirinya. Dalam tuntutan ini, plaintif menuntut kerugian am, teruk dan teladan terhadap defendan-defendan bagi fitnah berserta faedah dan kos. Isu-isu yang timbul bagi pemutusan mahkamah adalah sama ada perkataan-perkataan yang diadukan dalam bahagian artikel tersebut memfitnah plaintif; sekiranya perkataan-perkataan tersebut memfitnah plaintif, sama ada defendan-defendan berjaya dalam pembelaan pembelaan bersyarat mereka; sekiranya defendan-defendan gagal dalam pembelaan mereka apakah ganti rugi yang perlu dibayar oleh defendan-defendan kepada plaintif.

Diputuskan, menolak tuntutan defendan kedua dan ketiga dan menolak tuntutan terhadap defendan pertama:

(1) Perkataan-perkataan yang diadukan merujuk kepada 'two-minute clip released yesterday'. Klip video tersebut adalah rakaman video ('rakaman video tersebut') mengenai perbualan sebenar antara plaintif dan seorang yang bernama Khoo Chooi Thuan ('Khoo'). Adalah tanpa keraguan bahawa plaintif adalah 'Loh Mui Fan' dalam rakaman video tersebut. Mahkamah berpuas hati bahawa perkataan-perkataan yang diadukan, dibaca dalam konteks artikel dan dibaca bersama-sama dengan transkrip rakaman video membuktikan bahawa perkataan-perkataan yang diadukan merujuk kepada plaintif dan bukan orang lain. Dalam pernyataan fakta-fakta yang dipersetujui, defendan kedua mengaku menerbitkan artikel tersebut. Oleh itu, adalah fakta yang tidak dipertikaikan bahawa defendan kedua menerbitkan perkataan-perkataan yang diadukan (lihat perenggan 23, 26–27).

(2) Tafsiran harafiah dan jelas perkataan-perkataan yang diadukan, kepada pembaca umum, adalah bahawa mereka jelas memberi implikasi bahawa plaintif meminta bantuan, daripada seorang yang sedang berbual dengannya, untuk menggunakan hubungan orang tersebut dengan hakim-hakim tertentu untuk mempengaruh keputusan kes yang melibatkan plaintif (lihat perenggan 39).

(3) Tawaran defendan untuk menerbitkan penjelasan dibuat hampir dua bulan selepas terbitan asal perkataan-perkataan yang diadukan. Penjelasan tersebut bukanlah artikel pembetulan yang diminta oleh plaintif. Selain daripada memaklumkan sesalan, tiada permohonan maaf daripada defendan-defendan kerana menerbitkan perkataan-perkataan

tersebut terhadap plaintif. Dengan membiarkan perkataan-perkataan yang diadukan terbuka kepada tafsiran pembaca, defendan-defendan malah tidak memikul tanggungjawab terbitan fitnah terhadap plaintif. Oleh itu, penjelasan tersebut adalah sama sekali tidak mencukupi dalam hal keadaan ini (lihat perenggan 60).

(4) Berdasarkan penjelasan oleh defendan-defendan yang tidak mencukupi dan tidak boleh diterima, dan dengan ketiadaan permohonan maaf tidak bersyarat dalam akhbar defendan kedua, defendan-defendan tidak boleh berlindung di bawah pembelaan bersyarat yang diperuntukkan di bawah s 12(2) Akta Fitnah 1957. Walaupun jelas kepada defendan ketiga mengenai apa yang dibincangkan dalam rakaman video, adalah fakta bahawa perkataan-perkataan yang diadukan, dibaca dalam konteks sebetulnya artikel yang diterbitkan, adalah silap dalam kandungannya dan tidak adil dan merupakan laporan salah mengenai sidang akhbar dan rakaman video yang dikemukakan semasa sidang akhbar (lihat perenggan 61 & 70).

(5) Defendan-defendan juga gagal dalam sandaran mereka kepada pembelaan *common law* pembelaan bersyarat. Membezakan laporan defendan-defendan dengan terbitan perkataan-perkataan yang diadukan dengan laporan-laporan medua yang lain mengenai siding akhbar dan rakaman video yang sama, laporan-laporan medua yang lain melaporkan perbualan plaintif dengan Khoo dalam rakaman video tersebut dengan tepat. Oleh itu, terbitan defendan-defendan jelas salah dan memfitnah plaintif. Dalam keadaan sedemikian, niat jahat defendan boleh disimpulkan, khasnya apabila media lain boleh melaporkannya dengan tepat tetapi defendan-defendan tidak berbuat sedemikian. Sekiranya tiada niat jahat, defendan-defendan tidak akan menerbitkan laporan salah tersebut dengan cuai tanpa mengesahkan kebenerannya daripada plaintif dan dengan andaian betul rakaman video sebenar (lihat perenggan 76–78).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 523–723.

Cases referred to

Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd & Ors [2000] 1 MLJ 243, HC (refd)

Adam v Ward [1917] AC 309, HL (refd)

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ (Rep) 321, HC (refd)

Bonnick v Morris [2002] UKPC 31, PC (refd)

Chin Choon @ Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494; [2005] 2 CLJ 569, CA (refd)

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)
Consolidated Trust Company Limited v Browne [1948] State Reports (NSW) 86, CA (refd)
Dato' Dr Hasan Haji Mohamed Ali v Khalid Abdul Samad [2012] 1 LNS 980 (refd)
Datuk Harris Mohd Salleh v Datuk Yong Teck Lee & Anor [2012] 4 MLJ 372; [2012] 9 CLJ 743, HC (refd)
Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat [2012] 2 MLJ 807 (refd)
Fullam v Newcastle Chronicle and Journal Ltd and another [1977] 1 WLR 651, CA (refd)
Jameel and others v Wall Street Journal Europe SPRL [2006] UKHL 44, HL (refd)
Jones v Skelton [1963] 3 All ER 952, PC (refd)
Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v The New Straits Times Press (M) Bhd & Ors and another suit [2013] 8 MLJ 199; [2013] 3 CLJ 700, HC (refd)
Kumarasamy Naciappan v The New Straits Times Press (M) Bhd [2012] 1 LNS 997 (refd)
Lewis and another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd [1963] 2 All ER 151, HL (refd)
Lim Guan Eng v Utusan Melayu (M) Bhd [2012] 2 MLJ 394; [2012] 2 CLJ 619, HC (refd)
On Tin Khoon lwn Hu Sepang dan lain-lain [1995] MLJU 96, HC (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393; [1995] 1 LNS 304, HC (refd)
Ummi Hafilda bte Ali v Ketua Setiausaha Parti Islam Se Malaysia (PAS) & Ors [2006] 4 MLJ 761; [2006] 3 CLJ 252, HC (refd)
Utusan Melayu (M) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor [2005] 2 MLJ 397; [2005] 1 CLJ 71, CA (refd)

Legislation referred to

Copyright Act 1987 s 26
Defamation Act 1957 s 12(2), Schedule, Part II, para 2

Americk Sidhu (Americk Sidhu) for the plaintiff.
Bhag Singh (Bhag Sulaiman & Co) for the defendants.

Yeoh Wee Siam J:

BRIEF FACTS

[1] The plaintiff was at the time of this action a notable businessman in Malaysia and other parts of Asia.

[2] The first defendant was at the material time the Chief News Editor of the second defendant, a Malaysian daily newspaper known as 'The Star' ('The Star').

[3] The third defendant was at the material time a journalist employed by the second defendant. He prepared and wrote a section of the news article ('the article') appearing in *The Star* on the 6 February 2013 entitled 'Judges must read submissions' at p 24 of the 'Nation' section of the newspaper.

[4] The plaintiff contended that in the article, reproduced below, the defendants published the following words which are defamatory of the plaintiff (CBOD1 Pt B p 1):

> Particulars of the Article appearing at page 24 of The Star on 6.2.2013 entitled 'Judges must read submissions'
>
> 'Kuala Lumpur: Court of Appeal judges may read case notes before a hearing but not at the expense of the written submissions and appeal record.
>
> Lim Chee Wee said Court of Appeal President Tan Sri Raus Sharif told the Bar Council that this has been communicated to his judges.
>
> While rogue lawyers could, as alleged by some quarters, try to influence registrars in writing case notes favouring one party, Lim said, such abuse would be ineffectual if judges read the written submissions and appeal record.
>
> Malik Imtiaz Sarwar, who often appears in the Court of Appeal and Federal Court, said registrars/law clerks in many countries wrote briefs for their judges, including Singapore.
>
> 'However, here, we get the impression that judges haven't had the time to read the actual file'.
>
> They were responding to the front page article in The Star yesterday on a small group of lawyers who like to boast they can fix cases. Known as the 'Dream Team' or syndicate/cartel, their puppet master is a retired judge. But can our judges possibly read every file? The Federal Court case load on Jan 30 was a typical one — nine appeals, of which three were civil matters and six were criminal appeals, of which three were death penalty cases.
>
> Lim admitted there was no necessity for registrars to prepare case notes if lawyers prepared their written submissions on time and in a format judges found easy to understand.
>
> He said they accepted there was much room for improvement in writing submissions.
>
> Requesting anonymity, a practitioner of some 40 years said there would be less opportunity for abuse if there was no 'obsession to clear the backlog of cases'.
>
> 'When I started practice, judges had three cases a day, not nine. Cases shouldn't take 30 years but what's the difference if a case takes two or three years to complete.
>
> At the end of the day, the judge has a duty to explain clearly in his grounds to the loser why he lost'.

Lim said Raus had implemented a new time-table so judges would sit one week and spend the following week writing and reading.

He said judges today worked very hard in comparison, adding that an appointment to the Bench was 'no longer a semi-retirement plan' for lawyers, those from Judicial and Legal Services or Attorney General's Chambers.

Imtiaz praised Chief Justice Tun Arifin Zakaria's empanelling of five judges in the apex Court.

'We have seen greater participation (from all the panel) and hence (there is) lesser opportunity for corruption'.

Imtiaz added Arifin should have an audit process to monitor his judges based on the Judges' Code of Ethics, and set up a system for self-correction.

Meanwhile, Kelana Jaya MP Loh Gwo Burne released another video clip alleging case fixing in the judiciary, reports TEH ENG HOCK.

The two-minute clip released yesterday shows his father asking an unidentified man to request a judge to help in his case and the man replying that there was no need because his 'wheeler dealer broker' friend was there.

In 2007, a Royal Commission of Inquiry was set up to look into the fixing of judicial appointments after Loh released the VK Lingam clips. (Emphasis added.)

[5] The plaintiff claims that the words in the section of the article as emphasised above ('the words complained of'), written by the third defendant, referred to the plaintiff and are a libellous publication, and are defamatory of him. The plaintiff is now claiming general damages, and aggravated and exemplary damages against the defendants for libel, and interest and costs.

THE PLAINTIFF'S BACKGROUND

[6] In his witness statement, PW1-WS, the plaintiff stated that besides being a businessman, he has a keen interest to see changes taking place in the country which reflect proper and transparent governance in the government. He has been very concerned with the influence some parties had on the outcomes of matters filed in our courts. He has little doubt that most of our judges are fair and independent but he believes that some of them are not. He stated that an independent judiciary is fundamental to the workings of any democracy and is the pillar of the doctrine of separation of powers.

[7] The plaintiff is a current litigant in some acrimonious legal proceedings against his siblings relating to his father's shares in a company that his father owned. These proceedings have been on-going for about 13 years and have yet to be resolved.

[8] During the early stages of these proceedings, the plaintiff sought the legal services of a lawyer called VK Lingam to represent the plaintiff's father's

A (Loh Kim Foh) interests. During their meetings, the plaintiff noticed that VK Lingam kept referring to the influence he had with the Judiciary and the fact that he had close connection with the senior judges.

B **[9]** Around that time, a number of civil suits ended up in favour of the legal opponents of the plaintiff and his father.

[10] At that point in time, once the plaintiff's siblings gained control of the company of the plaintiff's father, they decided to liquidate all the company C assets. They appointed one Khoo Chooi Thuan ('Khoo') to be the liquidator.

[11] During the plaintiff's discussions with Khoo, Khoo kept telling the plaintiff that the plaintiff had no hope of winning any of the cases filed as Khoo was well-connected and that is why it would be better for the plaintiff to settle D all matters according to Khoo's terms so that the liquidation and distribution of the assets of the shares of the plaintiff's father in the company could take place smoothly.

E **[12]** Khoo proceeded to remind the plaintiff of the criminal case brought against the plaintiff's eldest brother, Loh Kon Fah, for fraud in the Kuala Lumpur Sessions Court Jenayah 8, No 62–370 OF 2008. Khoo mentioned to the plaintiff that the criminal charge against Loh Koh Fah could not proceed as he had engaged a good lawyer to assist in the case.

F **[13]** The plaintiff stated that surprisingly this lawyer is now a judge and is the same judge referred to by Khoo in the video recording in question in these proceedings.

G **[14]** It made the plaintiff angry, and he felt powerless to fight the civil suits knowing that they would inevitably be decided against him.

[15] The plaintiff and his son, Loh Gwo Burne, were involved in the release of the video tapes regarding VK Lingam, which were presented before the H Royal Commission of Inquiry ('the inquiry') held in 2007/2008.

[16] The plaintiff went on to state that despite what he had revealed in the inquiry, it appeared that Khoo was still persisting with his claims to have access I to the judiciary through his connections.

[17] Khoo made very specific references to certain judges who were there to 'help' him. As Khoo was the liquidator of the the company of the plaintiff's

father, the plaintiff thought that Khoo had an interest in the outcome and discriminately sided with the plaintiff's siblings from the beginning, against the interests of the plaintiff's father.

[18] Because Khoo kept emphasing the influence he claimed that he had by boasting about his connections with the judiciary, the plaintiff decided to record these claims, hence the video recording in these proceedings. The plaintiff knew that if he met up with Khoo, Khoo would repeat what he had been telling the plaintiff in the past.

ISSUES

[19] The issues are:

(1) whether the words complained of in the above section of the article are defamatory of the plaintiff;

(2) if the words are defamatory of the plaintiff, whether the defendants can succeed in their defence of qualified privilege; and

(3) if the defendants fail in their defence, what would be the damages to be paid by the defendants to the plaintiff.

EVALUATION AND FINDINGS

(1) Whether the words complained in the above section of the article are defamatory of the plaintiff

[20] The burden of proof is on the plaintiff to prove the following three legal prerequisites:

(a) that the words complained of refer to the plaintiff;

(b) that the defendants published the words complained of; and

(c) that the words complained of are defamatory of the plaintiff.

(see *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315, at p; [1989] 1 CLJ (Rep) 321, at p 324).

(a) Whether the words complained of refer to the plaintiff

[21] The words complained of, read together with the preceding paragraph and the paragraph after it, show the following context:

> Meanwhile, Kelana Jaya MP Loh Gwo Burne released another video clip alleging case fixing in the judiciary, reports TEH ENG HOCK.
>
> *The two-minute clip released yesterday shows his father asking an unidentified man to request a judge to help in his case and the man replying that there was no need because*

his 'wheeler dealer broker' friend was there.

In 2007, a Royal Commission of Inquiry was set up to look into the fixing of judicial appointments after Loh released the VK Lingam clips. (Emphasis added.)

[22] The plaintiff is Loh Gwo Burne's father. It is without doubt that the words 'his father' in the words complained of refer to the plaintiff.

[23] The words complained of refer to a 'two-minute clip released yesterday' ie the day before the publication of the article on 6 February 2013, therefore referring to 5 February 2013. The 'two-minute clip' is the 'video clip' in the paragraph preceding the whole paragraph of the words complained of.

[24] The video clip is the video recording ('the video recording') of the actual conversation between the plaintiff and Khoo Chooi Thuan ('Khoo') (CBOD2 Pt B p 3). The transcript of the relevant portion of the video recording exhibited in court reads as follows:

> LOH MUl FAH :*You know very well ah ... your good friend ah ... so he can ask ***** to help you.*
>
> KHOO CHOOI THUAN :*No need lah ***** will be there what ... my good friend ... my old wheeler dealer broker ....*
>
> [Note: the above asterisks ***** have been inserted purposely by the Plaintiff to avoid revelation of the references made to certain Judges by name.]

[25] According to the plaintiff's evidence, on 5 February 2013, the plaintiff and his son, Loh Gwo Burne, the Member of Parliament for Kelana Jaya at the material time, held a press conference at which the video recording was played ('the press conference'). This is the same video recording produced in court.

[26] The court viewed the video recording. It is without doubt that the plaintiff is 'Loh Mui Fan' in the video recording. The court is satisfied that the words complained of, read in the context of the article, and read together with the transcript of the video recording prove that the words complained of refer to the plaintiff, and not to any other person.

(b) Whether the defendants published the words complained of

[27] In the statement of agreed facts, the second defendant admits publishing the article complained of in *The Star* newspaper on 6 February 2013. Therefore, it is an undisputed fact that the second defendant published the words complained of.

(c) Whether the words complained of are defamatory of the plaintiff

[28] Learned counsel for the defendants submitted that much revolves around the words 'his' in the words complained of, whether 'his' refers to the plaintiff or does it refer to the 'unidentified person', what is it that is referred to as 'his'. Learned counsel for the defendants further submitted that there are two possible interpretations to be drawn:

(1) the wheeler dealer broker friend is a friend of the unidentified man; or

(2) he was a friend of the plaintiff.

[29] He submitted that the interpretation in (1) above would be adverse to the unidentified man whereas the interpretation in (2) above would be adverse to the plaintiff. Whether it would be defamatory is another matter.

[30] The court is of the considered opinion that the words 'help in his case' refer to help in the plaintiff's case, because of the preceding words about 'his father' or the plaintiff asking for help. Whereas, 'his' wheeler dealer broker friend has a double meaning. It can mean either the plaintiff's wheeler dealer broker friend, or Khoo's wheeler dealer broker friend. In this case, the plaintiff is alleging that it means the plaintiff's wheeler dealer broker friend. In my view, the plaintiff ought to be given the benefit of the doubt since 'his' can refer to either the plaintiff's or Khoo's wheeler dealer broker friend.

[31] The plaintiff has clarified that the unidentified man in the video recording is Khoo. The court finds that in the video recording, the plaintiff was telling Khoo that Khoo knows very well that Khoo's good friend can ask a certain person (purportedly a judge) to help Khoo.

[32] Khoo then replied that there was no need to do so as a certain person (purportedly a judge) would be there ie Khoo's good friend, who is Khoo's old wheeler dealer broker.

[33] However, as submitted by learned counsel for the plaintiff, the defendants published the words complained of in a manner which is diametrically opposite to what is in the video recording. The words complained of reported that the two-minute video clip shows Loh Gwo Burne's father (ie the plaintiff) asking an unidentified man to request a Judge to help in Loh's father's case (ie the plaintiff's case). This is untrue because in the video recording the plaintiff was not asking an unidentified man to request a judge to help in the plaintiff's case. The plaintiff made no such request.

[34] In the video recording, Khoo was not an unidentified man. He was identified as Khoo. In the video recording, Khoo was the one who needed to ask for help regarding Khoo's case, and not the plaintiff asking Khoo to request a judge to help in the plaintiff's case.

[35] The test whether the words complained of are defamatory is whether by the ordinary and natural meaning of the words, an average and ordinary reader of the words would come to the conclusion that the personality referred to had done something wrong, heinous, dishonest, frowned upon by society, not socially acceptable, or criminal in nature or reprehensible (see *Jones v Skelton* [1963] 3 All ER 952, 958, *Lewis and Another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd* [1963] 2 All ER 151, 154, and *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; [1995] 1 LNS 304).

[36] In *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461, the Court of Appeal succinctly put it:

> ..., the test to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonourable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[37] In the law of defamation, it is the ordinary meaning and the implications of the words complained of that matter. In *Gately on Libel and Slander* (10th Ed) para 3.1.6 it is stated:

> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the claimant has been called a thief and a murderer. *But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning* (as per Lord Reid in *Lewis v Daily Telegraph* [1964] AC 234 at 258). (Emphasis added.)

[38] What is essential to consider is what would be the reaction of an average reader of *The Star* newspaper when reading those impugned words. The crux of the matter is how that average reader's mind would be affected by the words complained of.

[39] The court agrees with the submission of learned counsel for the plaintiff that the literal and obvious interpretation of the words complained of, to an ordinary reader, is that they clearly imply that the plaintiff was seeking assistance, from the person whom he was in conversation with, to use that person's connections with certain judges to influence the outcome of the case

that the plaintiff was involved in. This situation is further aggravated by the last line of those words complained of in the defendants' publication when it was reported that the plaintiff was basically told by Khoo to use the plaintiff's own wheeler dealer broker friend to influence whatever judge he was considering. The implication is that the plaintiff has the propensity to resort to nefarious means to achieve his ends, which was to interfere with the sanctity of an independent judiciary for favourable outcomes in the litigation that he was involved in.

[40] This has to be contrasted with what the plaintiff actually said to that other person in the video recording. There, the plaintiff clearly told Khoo that Khoo's good friend was capable of requesting a certain judge to help Khoo. Khoo then replied by saying that this was not necessary as Khoo would resort to Khoo's wheeler dealer broker judge to resolve matters.

[41] Learned counsel for the defendants submitted that the paragraph containing the words complained of should be read together with the preceding paragraph where it was reported that the MP Loh Gwo Burne released another video clip alleging case fixing in the Judiciary. Any ordinary reader reading the preceding paragraph would not think that the words complained of are defamatory of the plaintiff because there is no reason for Loh Gwo Burne to release a video clip which is defamatory of his own father, the plaintiff.

[42] The court is of the opinion that even though it does appear to be illogical in the article for Loh Gwo Burne to release a video clip which is defamatory of his own father, the fact is that the second defendant did publish the words complained of based on the original report of the third defendant. The words complained of, read in the context of its own paragraph, are defamatory of the plaintiff irrespective of the reason why Loh Gwo Burne would want to release the video clip if it is defamatory of his father.

[43] Learned counsel for the defendants submitted that no evidence has been led by the plaintiff to show that any or some of the readers of the newspaper would know about these matters, or what their perception, as ordinary readers, would be. He submitted that notwithstanding the fact that the publication is a newspaper, it is still necessary to identify the person who had knowledge of the words complained of. He cited the case of *Consolidated Trust Company Limited v Browne* [1948] State Reports (NSW) 86 where the New South Wales Court of Appeal held, inter alia, that 'it is necessary to prove that it was published to a person or persons who had knowledge of those circumstances'.

[44] In *Fullham v Newcastle Chronicle And Journal Ltd and another* [1977] 1 WLR 651 at p 659, Scarman LJ stated:

A There may well be cases in which it would not be necessary to plead more than the fact of publication by newspaper and the extrinsic circumstances, leaving it to be inferred that there would be readers with knowledge of the facts.

B **[45]** Following the above statement, I am of the view that in the present case, the fact of publication in the newspaper, *The Star*, is sufficient. Even though the plaintiff did not call any reader of the publication to testify that the reader knows of the publication, it can be inferred by this court that any reader, out of the thousands or even millions of readers of *The Star*, would have read and have knowledge of the publication of the words complained of, and would have interpreted the words according to their ordinary and natural meaning as an ordinary and reasonable reader.

D **[46]** The defendants' publication of the words complained of made the plaintiff appear to be a judge briber. This is what an ordinary man on the street, reading this article, would inevitably conclude.

E **[47]** The court finds that the words complained of are clearly defamatory and capable of lowering the plaintiff in the estimation of right-thinking members of society, opening the plaintiff to ridicule, odium and contempt and generally casting adverse aspersions on the integrity of the plaintiff. As can be seen from the former incident of the release of the VK Lingam video recording by Loh Gwo Burne, the plaintiff contended that he has enjoyed the reputation of one who has championed the cause for a truly independent judiciary, free from financial or other influences, and for which he has sacrificed much. This good reputation, so dearly held by the plaintiff and acknowledged by the general public, in this context, has been irreparably tarnished and perhaps destroyed. Furthermore, the plaintiff appears to have been branded a hypocrite by the publication of the words complained of.

G **[48]** After having considered the evidence adduced by the plaintiff, the court is satisfied that the plaintiff has proved the three legal prerequisites for his claim for defamation against the defendants.

H *(2) Whether the defendants can succeed in their defence of qualified privilege*

I **[49]** The burden of proof now shifts to the defendants, to prove on credible evidence, the pleaded defence of the defendants and/or that the words complained of are not defamatory (see *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394 at p; [2012] 2 CLJ 619 at p 626).

[50] The defendants relied on s 12(2) of the Defamation Act 1957 ('the DA'), particularly Part II(2) of the Schedule to the same Act.

[51] The defendants pleaded in the statement of defence that the presentation of the materials prepared by the third defendant to the second defendant is protected by qualified privilege and such publication was without malice and privileged.

[52] Section 12(2) of the DA provides as follows:

> Qualified privilege of newspapers
>
> 12(1) ...
>
> (2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, *the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adeguate or not reasonable having regard to all the circumstances.* (Emphasis added.)

[53] The Schedule to the DA in para 2 Part II states as follows:

> STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION
>
> 1. ...
>
> 2. A fair and accurate report of the proceedings of any public meeting held in Malaysia.

[54] The question is whether the defendants, upon request by the plaintiff, have published in its newspaper a reasonable statement by way of explanation or contradiction. If the defendants have refused or neglected to do so, or have done so in a manner which is not adequate or not reasonable, then the defendants shall not be allowed to rely on the defence of qualified privilege under s 12(2) of the DA.

[55] The following correspondence between the plaintiff, the defendant and their solicitors is noted:

(a) letter from the plaintiff to the editor-in-chief, *The Star* dated 7 February 2013 (CBOD1 Pt B p 2);

(b) letter to the plaintiff from the defendants' solicitors, Messrs Bhag Sulaiman & Co, dated 18 February 2013 (CBOD2 Pt B p 2);

(c) the plaintiff's solicitor's letter to Messrs Bhag Sulaiman & Co dated 8 April 2013 (CBOD1 Pt B p 8);

(d) letter of Bhag Sulaiman & Co to the plaintiff's solicitors dated 29 April 2013 (CBOD1 Pt B p 11); and

(e) letter from the plaintiff's solicitors to Bhag Sulaiman & Co dated 9 May 2013 (CBOD1 Pt B p 13).

[56] As submitted by learned counsel for the plaintiff, from the chain of correspondence above, it is clear that the plaintiff had, almost immediately after the impugned publication, on 7 February 2013, demanded of the defendants a correction article to be published with immediate effect, and with sufficient and appropriate prominence, in their newspaper.

[57] The plaintiff received a response from the defendants' solicitors on 18 February 2013 saying that they were looking into the matter.

[58] There was no further response from the defendants. The plaintiff then instructed his solicitors to write to the defendants' solicitors their letter dated 8 April 2014 pointing out to them that no effort had yet been made to rectify the grave error in the content of the words complained of, and demanding an unequivocal apology to be published and displayed prominently in the defendants' newspaper within 14 days and also damages for libel, failing which legal proceedings would be commenced.

[59] The defendants' solicitors then responded vide their letter dated 29 April 2013 with excuses on the interpretation of the published words complained of, and offered to publish a 'clarification' which was to read:

> if any reader has interpreted these words adversely against him, the Star expresses and conveys to him its regrets.

[60] The court finds that this offer by the defendants to publish the above clarification was made almost two months after the original publication of the words complained of. The clarification is not a correction article as required by the plaintiff. Other than an expression of regret, there is no apology proffered by the defendants for publishing the defamatory words against the plaintiff. By leaving it open to the reader's interpretation of the words complained, the defendants in fact did not accept responsibility for the libellous publication against the plaintiff. Thus, the clarification is wholly inadequate in the circumstances.

[61] In view of the inadequate and unacceptable clarification proposed by the defendants, and in the absence of an unconditional apology published in the second defendant's newspaper, the court holds that the defendants are unable to avail themselves of the defence of qualified privilege provided in s 12(2) of the DA.

[62] What is now left for the defence is whether under para 2 of Part II to the

Schedule to the DA, the publication of the words complained of amount to 'A fair and accurate report of the proceedings' of the 'public meeting' ie the press conference held by the plaintiff with his son, Loh Gwo Burne, on 5 February 2013.

[63] As this court had held earlier in this judgment, the publication of the words complained of in the article are diametrically opposite to the actual contents of the video recording. It is therefore an inaccurate, untrue and unfair report of the press conference and the contents of the video recording.

[64] The third defendant (DW2), the journalist who wrote the report on the press conference and the video recording, under cross-examination, admitted that there were errors in the words complained of that were published. He stated that he wrote a report of eight paragraphs which he had submitted to his editors. According to the third defendant, the editors edited it and made changes in what he had written and summarised what he wrote from eight paragraphs to three paragraphs. Finally, that summary was incorporated into the article which was written by another journalist, Shaila Koshy, and published in the form of the words complained of.

[65] It is to be noted that, without making amends to the plaintiff for the libellous publication, the original report written by the third defendant ('the original report') was published by the second defendant at a subsequent date on 8 December 2013 in the *Sunday Star* at Nation p 12. The defendants alleged that the original report was inadvertently published due to a computer glitch. However, other than oral evidence, no documentary evidence was adduced to prove that the computer glitch did in fact occur. The act of the defendants in publishing the original report is a double blow to the plaintiff. It shows the lack of regret on the defendants' part for publishing the words complained of against the plaintiff.

[66] The original report (CBOD1 Pt B p 1) reads as follows:

> Loh has got another case fixing clip
>
> PETALING JAYA: Kelana Jaya MP Loh Gwo Burne has release another video clip which he claims showed another case fixing within the judiciary.
>
> Loh, who became a public figure when he released the VK Lingam clips in 2007, released a two-minute clip yesterday showing his father Mui Fah discussing a civil case with an unidentified man whose face had been blurred out.
>
> *In the clip, Mui Fah had asked the man to ask 'W', purportedly a judge, to help the latter out with his case.*
>
> *'Yes, but no need. 'J' is there. My good friend. 'J'. my old wheeler dealer broker,' said the man.*

> Loh said he released the video because he wanted the Government to clean up the judiciary, which he labelled as the last bastion of civil society.
>
> 'VK Lingam is just the flag pole on top of the iceberg. There are many icebergs.
>
> 'There are a lot of good judges out there. We don't want their profession to be tarnished,' he said.
>
> A Royal Commission of Inquiry was set up to look into the manipulation of judicial appointments after Loh released the VK Lingam clips in 2007. (Emphasis added.)

[67] Learned counsel for the defendants submitted that the original report is not defamatory because it is what actually transpired. The plaintiff had called the unidentified person to trap him to admit that he could fix cases. In that sense, the plaintiff had achieved his purpose.

[68] The court finds that the words complained of are different from the contents of what the third defendant wrote in his original report. The third defendant wrote in his original report that in the video clip, the plaintiff was asking an unidentified man to ask a certain judge to help the unidentified man with the case of the unidentified man, meaning that the plaintiff was suggesting to the unidentified man to approach a judge 'to help' in the case. It gives the meaning that the plaintiff was engaged in a criminal act of suggesting to the unidentified man to influence a judge's decision on a case. The original report of the third defendant is therefore also defamatory of the plaintiff, just as the words complained of, but with some difference in content.

[69] The third defendant admitted that he did not attend the press conference. He did not watch the video recording that was presented in the press conference, but he watched a similar one on Stream Malaysia Today. The third defendant further stated that he did not call the plaintiff or his son, Loh Gwo Burne, to confirm what was said because 'it was very obvious what they had said on video'.

[70] Even though it was very obvious to the third defendant on what was said in the video recording, it is a fact that the words complained of, read within its proper context of the article that was published, were erroneous in content, and were not a fair and accurate report of the press conference and the video recording presented during the press conference.

[71] The court holds that the statutory defence of qualified privilege afforded under s 12(2) and para 2 of Part II of the Schedule to the DA is not available to the defendants.

COMMON LAW DEFENCE OF QUALIFIED PRIVILEGE

[72] The defendants are not clear in their statement of defence whether they are relying on the common law defence of qualified privilege. On the side of caution, this court would now consider this possible defence for the defendants, whether the defendants can rely on it.

[73] The test to be applied is whether the defendants had practised responsible journalism according to the Reynolds privilege in order to avail themselves of the common law defence of qualified privilege. The defence can be rebutted by evidence of the element of malice shown on the part of the defendants (see *Adam v Ward* [1917] AC 309).

[74] In *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44, Lord Hoffman, speaking for the House of Lords, referred to *Bonnick v Morris* [2002] UKPC 31 at p 21 paras 53–54, and adopted the following principle at p 309:

> Stated shortly, the Reynolds Privilege is concerned to provide a proper degree of protection for *responsible journalism* when reporting matters of public concern. *Responsible journalism* is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved.
>
> Lord Nicholls was speaking in the context of a publication in newspaper but the defence is of course available to anyone who publishes material *of public interest* in any medium. *The question in each case is whether the defendant behaved fairly and responsibly in gathering and publishing the information*. (Emphasis added.)

[75] The question is whether the defendants have behaved fairly and responsibly by ensuring the accuracy of their report on the content of the plaintiff's press conference and the video recording.

[76] The court compares the defendants' report and publication of the words complained of with other media reports on the same press conference and video recording. The court finds that the other media reports eg The Malay Mail, Free Malaysia Today and Malaysiakini (CBOD1 Pt B pp 2–7) reported accurately the conversation that the plaintiff had with Khoo in the video recording.

[77] Therefore, the defendants' publication is clearly false and defamatory of the plaintiff. In such a situation, malice on the part of the defendants can be inferred, more so when other media could report it accurately, but the defendants did not do so. If there is no malice, the defendants would not have

recklessly published the false report without verifying the truth from the plaintiff and by proper deciphering of the actual video recording.

[78] The court finds that the defendants have also failed in their reliance on the common law defence of qualified privilege.

[79] Accordingly, the court holds that the plaintiff has proved his claim, on a balance of probabilities, against the defendants.

LIABILITY OF THE FIRST DEFENDANT

[80] The first defendant was the Chief News Editor at the material time. It is true that the first defendant can be made collectively responsible with the second and third defendants by virtue of his position as the Chief News Editor of the second defendant. However, the evidence shows that the first defendant had no role to play in the creation and publication of the news article in question. He testified that the final decision on publication is that of the Group Chief Editor, one Datuk Seri Wong Chun Wai. If the Group Chief Editor was not present to chair the meeting where the decision was made on the publication, the Deputy, or the next most senior person, would usually chair the meeting. In this case, the first defendant was not present when the story was approved. The plaintiff should have sued the Group Chief Editor, and not the first defendant. Accordingly, the first defendant cannot be made liable to the plaintiff in this action.

LIABILITY OF THE SECOND DEFENDANT

[81] The second defendant admitted to the publication of the article containing the words complained of. The court has earlier found that the words complained of are defamatory of the plaintiff. Accordingly, the second defendant is held liable to the plaintiff for the libellous publication.

LIABILITY OF THE THIRD DEFENDANT

[82] Learned counsel for the defendants submitted that the third defendant, being a journalist, had no role to play with regard to the material composed ie the original report, once it was submitted to his employer, the second defendant. He relied on s 26 of the Copyright Act 1987 which provides that the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer ie the second defendant. Thus, the third defendant had neither the authority nor the power or any right on what was eventually published.

[83] The court is of the view that even though the third defendant's copyright to the original report had been transferred to the second defendant, the fact remains that the third defendant is the writer of the original report which was used and which formed the basis of what the second defendant published in the article containing the words complained of. The third defendant should therefore be held liable for the same.

[84] To hold otherwise would set precedent for any journalist to write defamatory material and get away with it by pleading that it is the employer/newspaper who published it. Journalists have to be made accountable for the truth of the contents of the reports that they write. As I had found earlier, even the emphasized words in the original report of the third defendant are defamatory of the plaintiff. In fact, the plaintiff's name, Mui Fah, was specifically mentioned in the original report. The third defendant also wrote that 'Mui Fah had asked the man to ask 'W', purportedly a judge, to help the latter out with his case'.

DAMAGES

[85] The plaintiff averred in para 6 of the statement of claim that the words complained of, in their ordinary and natural meaning, were meant and understood to mean that the plaintiff:

(a) is predisposed to perverting the course of justice in Malaysia by seeking judicial favours via third parties and therefore interfering in the sanctity of the entire judicial process;

(b) is of a subversive propensity in his attempts to secure successful outcomes of all the plaintiff's legal matters pending before the courts by influencing those judges hearing these matters through bribery and corruption;

(c) has direct access to contacts within the judiciary who are prepared to pervert the course of justice by granting the plaintiff favours in securing positive outcomes in the matters before the courts in which the plaintiff is a litigant;

(d) has sought to undermine the integrity of the entire judicial process by using his influence to broker deals with judges via third parties to ensure any litigation the plaintiff is involved in before the courts would be decided in the plaintiff's favour;

(e) is an entirely unethical person;

(f) is prepared to commit and/or has committed criminal acts, which carry sentences of imprisonment upon conviction; and

(g) is capable of undermining the entire judicial system in this country by nefarious and illegal means especially to the detriment of his legal adversaries.

[86] The amount of damages to be awarded depends on the facts and circumstances of the case.

[87] The court considers the submission of learned counsel for the plaintiff that the plaintiff is well known publicly as someone who has battled to ensure that the sanctity of the judicial system is preserved against external interference, based on the doctrine of separation of powers. The plaintiff is also the father of a past Member of Parliament, Loh Gwo Burne, who held a Federal seat for five years. The plaintiff therefore has a reputation which held him in high esteem amongst right-thinking members of society.

[88] The second and third defendants, acting jointly or severally, were instrumental in publishing material which alleged that the plaintiff was in the habit of interfering with the Judiciary and the fair disposal of cases, and that he was involved in bribing the judges appointed to hear those particular matters to ensure favourable outcomes. This allegation carries severe connotations of serious criminal conduct.

[89] For this serious defamatory publication, the second and third defendants ought to pay damages to the plaintiff.

[90] In deciding on the quantum of damages to be awarded, there are additional aggravating factors to be considered:

(i) that the second and third defendants, although given every opportunity to do so, failed to publish an apology or a retraction of the words complained of;

(ii) that the second defendant, relying on the excuse of a purported computer glitch, had, a few months later, on 8 December 2013 repeated the alleged libel in another article published regarding the plaintiff ie the original report of the third defendant (CBOD1 Pt B p 1);

(iii) that the clarification or retraction eventually suggested by the defendants to be published in their newspaper, after a few months of the plaintiff's initial demand, does not commensurate with the serious gravity of the libel published and was therefore wholly inadequate as a genuine display of contrition on their part;

(iv) That the second defendant's newspaper, *The Star*, is one of the top daily publications in Malaysia with a substantial readership in Peninsular Malaysia, and some readership in Sabah and Sarawak. The newspaper is

published in the hard copy and also online; and

(v) That the content of the libel is extremely serious in nature, with allegations of criminal conduct which carries a sentence of imprisonment under the Malaysian Anti-Corruption Commission Act 2009 which could extend to 20 years, and a heavy fine.

[91] Learned counsel for the plaintiff submitted the following authorities for the court's consideration in deciding the quantum for damages for defamation:

Lim Guan Eng v Utusan Melayu (M) Bhd [2012] 2 MLJ 394; [2012] 2 CLJ 619 The defendant newspaper accused the plaintiff of being racist and anti-Malay in an article published.

Award: RM200,000.

Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat KL High Court Civil Suit S-23NCVC–5 of 2011 [2012] 2 MLJ 807 (Zabariah Mohd Yusof J)

The plaintiff was accused of raping his Indonesian maid on the defendant's blog.

Award: RM300,000.

Dato' Dr Hasan Haji Mohamed Ali v Khalid Abdul Samad [2012] 1 LNS 980

The defendant published remarks on his own blog questioning the source of the plaintiff's funds in carrying out a road show.

Award: RM300,000 as damages including aggravated damages.

Chin Choon @ Chin Tee Fut v Chua Jui Meng [2005] 3 MLJ 494; [2005] 2 CLJ 569

The defendant caused to be published in two Chinese newspapers allegations that the defendant (Minister for International Trade and Industry) had accepted gratification of RM500,000–RM600,000 and was corrupt.

Award: RM200,000.

Ummi Hafilda bte Ali v Ketua Setiausaha Parti Islam Se Malaysia (PAS) & Ors [2006] 4 MLJ 761; [2006] 3 CLJ 252

The defendants published in their newspaper, 'Harakah', an article depicting the plaintiff as a prostitute, a mentally unsound person obsessed with the former Deputy Prime Minister, who had bad clothing taste, and was disowned by her father.

Award: RM200,000.

Utusan Melayu (M) Bhd & Ors v Tjanting Handicraft Sdn Bhd & Anor [2005] 2 MLJ 397; [2005] 1 CLJ 71

The defendants published an article commenting on the quality of the plaintiff's batik apparel worn by APEC leaders at a function.

Award: RM1.3m reduced to RM250,000.

Kumarasamy Naciappan v The New Straits Times Press (M) Bhd [2012] 1 LNS 997

The defendant published an article referring to statements made by one Murugiah but published a photo of the plaintiff instead.

Award: RM120,000.

Datuk Seri Anwar Ibrahim v Wan Muhamad Azri Wan (NST report 29 February 2014

The defendant, one 'Papagomo' published an article on his own news portal implying that the plaintiff was engaged in indecent acts with another man.

Award: RM800,000.

Kesatuan Kebangsaan Pekerja-Pekerja Bank & Ors v The New Straits Times Press (M) Bhd & Ors and another suit [2013] 8 MLJ 199; [2013] 3 CLJ 700

The plaintiff Union of Bank Employees claimed four articles were published by the defendant alleging misappropriation of union funds.

Award: RM260,000.

Datuk Harris Mohd Salleh v Datuk Yong Teck Lee & Anor [2012] 4 MLJ 372; [2012] 9 CLJ 743

The defendant caused to be published in the local newspaper, the 'Daily Express', a press release implicating the plaintiff as being involved in the 'double six' plane crash tragedy in Sabah in which Tun Fuad Stephens was killed.

Award: RM1m.

(Note: For this case, learned counsel for the defendants informed the court by a letter dated 10 June 2014 that on appeal, the Court of Appeal had on 18 November 2013 reversed the decision of the High Court and ordered that the sum of RM1m paid to the plaintiff be refunded to the defendants together with costs of RM150,000. The plaintiff filed a motion for leave to appeal to the Federal Court and the matter has yet to be fixed for hearing).

[92] Learned counsel for the defendants submitted that in the event the defendants are found liable, the case is suitable for the court to award nominal damages as in the case of *On Tin Khoon lwn Hu Sepang dan lain-lain,* Seremban High Court Civil Suit No 22–151 of 1990 [1995] MLJU 96 where the court awarded nominal damages of RM1 where the plaintiff did not testify about the damages he suffered for being called a black sheep, selling his personality, being double-faced, and not fit to become a reporter.

[93] Learned counsel for the defendant also cited *Abdul Karim bin Ayob v Kumpulan Karangkraf Sdn Bhd & Ors* [2000] 1 MLJ 243 where the article published by the first defendant under the heading 'Suami tebar cinta macam menebar jala' in Mingguan Wanita, with a photograph of the plaintiff, in full fireman's uniform, with a caption, 'Encik Karim — sekadar usik-usik apa salahnya', followed by an interview about firemen's life with from the plaintiff's own favourable views on the issue of 'miang'. The award of damages of RM100,000 by the High Court was reduced to RM30,000 by the Court of Appeal.

[94] It is trite law that damages for libel are actionable per se without proof of special damages. There is no obligation for the plaintiff to prove any damage suffered by the plaintiff, as was suggested by counsel for the defendant.

[95] The plaintiff did not adduce evidence on his pecuniary loss resulting from the defendants' publication of the words complained of. However, the plaintiff did testify to the damage caused to his reputation as stated in the earlier part of this judgment (see also his witness statement, Q18 to Q20 and Q22 and his answers). Thus, this is not a fit and proper case to award nominal damages. The damages to be awarded should be compensatory and should commensurate with the plaintiff's loss of his good reputation.

[96] After considering the authorities cited by both learned counsel, and bearing in mind that a claim for defamation is not meant to enrich oneself but rather to vindicate one's good reputation when seeking justice, this court is satisfied that the plaintiff should be awarded a global sum of RM150,000 for general damages, aggravated damages and exemplary damages.

DECISION

[97] The plaintiff's claim against the first defendant is dismissed. Costs of RM15,000 are to be paid by the plaintiff to the first defendant.

[98] The plaintiff's claim against the second and third defendants is allowed.

[99] The court orders the second and third defendants to pay the plaintiff as follows:

(a) general damages, aggravated damages and exemplary damages of RM150,000;

(b) interest thereon at 5%pa from the date of filing of the writ of summons until realisation; and

(c) costs of RM15,000 each.

Claim against second and third defendants allowed and claim against first defendant dismissed.

Reported by Afiq Mohamad Noor